

Service Area Plan

Department of Health

Certificate of Public Need (40608)

Service Area Background Information

Service Area Description

This service area implements the Virginia Medical Care Facilities Certificate of Public Need (COPN) laws and regulations. The COPN program requires that a provider of health care services must demonstrate that a public need exists for certain listed equipment and services before establishing the service or adding capacity. The program was established in Virginia in 1973. The statutory objectives of the program are: (i) promoting comprehensive health planning to meet the needs of the public; (ii) promoting the highest quality of care at the lowest possible cost; (iii) avoiding unnecessary duplication of medical care facilities; and (iv) providing an orderly procedure for resolving questions concerning the need to construct or modify medical care facilities. In essence, the program seeks to contain health care costs while ensuring financial and geographic access to quality health care for Virginia citizens.

Products and services include:

- Permitting of 11 categories of medical care facilities or services;
- Review, analysis and formulation of recommendations for COPN request based on 20 criteria for determining need;
- Assist the State Health Commissioner in the administration of the COPN program;
- Regulatory development to provide an orderly procedure for resolving questions concerning the need to construct or modify medical care facilities;
- The State Medical Facilities Plan;
- Assessing and tracking of charity care contributions from COPN applicants;
- Participating in informal fact finding conferences;
- The nursing facility Request for Applications (RFA) process;
- Release of monthly and annual reports on the status of COPN projects reviewed;
- Quadrennial nursing home utilization study.

Service Area Alignment to Mission

This service area directly aligns with VDH's mission of promoting and protecting the health of Virginians by promoting the development of new services when and where they are needed and limiting the unnecessary duplication of expensive technologies and services.

Service Area Statutory Authority

Article 1.1 of Chapter 4 of Title 32.1 of the Code of Virginia establishes the medical care facilities COPN program and directs implementation of a regulatory framework to assist applicants and reviewing agencies with examining the need for these projects.

Service Area Customer Base

Customer(s)	Served	Potential
Hospital applicants	37	101
Intermediate care facilities for the mentally retarded applicants	3	26
Nursing facilities applicants	10	279
Patients (patient days) ****Potential is one year at 3% increase per year	4,315,931	4,445,408
Physician applicants	40	21,000
Psychiatric hospitals applicants	1	9
Regional health planning agencies	5	5
Rehabilitation hospitals applicants	2	9

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Anticipated Changes In Service Area Customer Base

- More physicians are entering the marketplace with an entrepreneurial spirit and desire to maintain control of the technology on which they depend. This is expected to result in a continued increase in the annual number of COPN requests originating from physicians and physician practice groups.
- More providers of diagnostic services are seeking to enter the market place.
- Restrictions on the addition of nursing home beds from the Request for Applications process limits the number of nursing homes statewide that can apply. Proposed revisions to the regulations that will make it easier for a planning district to qualify for additional nursing home beds is expected to cause a transient spike in the number of nursing home COPN requests.
- Annual growth in patient days resulting from population growth, improved availability and access, and new technology creates additional demand for capacity in COPN regulated services and technologies.
- As hospitals constructed under the Hill-Burton program continue to age an increased need for renovation, addition and/or replacement exists, prompting more of the potential hospital applicants to pursue COPN projects.
- Historically, COPN has been a controversial feature of government efforts to contain health care costs. However, there is growing legislative support for eliminating the COPN program.
- The program has become a guarantor of “franchise” providers and often bars new providers from entering the health care market in Virginia, in favor of established providers. This limits growth in the customer base.
- Higher patient volume in a given service results in better clinical outcomes and survival rates for patients. Use of the COPN program to avoid an excess number of providers concentrates patients such that utilization of services is maximized such that outcomes should be improved. This limits uncontrolled and duplicative growth in the customer base.
- Advancements in medicine and technology have made diagnostic equipment, once too large and/or costly to operate outside a hospital environment, more lucrative for individual or small partner medical offices. Size and affordability of the equipment will increase the number of applicants.
- Interface with the Office of the Attorney General and the VDH Adjudication Officer regarding disputed COPN decisions assures due process for applicants, opponents and the public. Confidence in the fairness of the program supports a growing number of applicants.
- Collaboration with the Department of Medical Assistance Services establishes a need for additional nursing home beds that leads to the development of the nursing facility RFA. The RFA either limits or expands the number of applicants for nursing home beds, depending on the established need.
- Interface with Virginia Health Information regarding health care data reporting expands the information available to potential applicants and allows better decision making in regards to submission of an application, as well as improved quality of the application itself.

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Service Area Products and Services

- Reporting:
 - Provide written recommendations addressing the merits of the approval or denial of COPN applications;
 - Provide advisory reports on all completed applications that are not subsequently withdrawn;
 - Prepare an annual report on the status of the COPN program addressing the activities of the program, reviewing the appropriateness of continued regulation of a least three specific project categories, and discussing the issues of access to care for the indigent and health care market reform;
 - Provide advisory reports on all completed requests for significant changes to projects with COPN authorization;
 - Web based report of COPN requests currently under review or that have recently received a decision.
- Permitting:
 - Application review and granting of a COPN to provide a facility or service;
 - Tracking of compliance with conditioned obligations ensure that applicants have met the intent of the conditions on granted COPNs;
 - Issuance of the RFA targeting geographic areas for consideration of increased bed supply and establish competitive review cycles for submission of applications;
 - Annual monitoring of authorized projects for consistency with the plan as authorized and for continuing progress.
- Regulatory development:
 - Establish minimum operational requirements consistent with governing laws and nationally accepted medical practices;
 - Regulatory services provide a consistent framework for applicants and state agencies to examine and approve projects;
 - Establish 'batching cycles' for review of similar projects.
- Customer assistance:
 - Technical assistance and consultation to applicants;
 - Expand information available to providers on the Internet. As information is more readily available in electronic form, additional customers will become aware of this resource, thus increasing VDH's customer base;
 - Provide responses to frequent FOIA requests for project documentation.

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Factors Impacting Service Area Products and Services

- Continued repeal of program categories through legislative action has slowly eroded the effectiveness and integrity of the program.
- Legislative circumvention of the RFA process by nursing facility providers negatively impacts efforts to control state Medicaid costs.
- Frequent legislative mandates requiring regulatory changes and the complexities of the regulatory promulgation process (the APA) negatively impact the efforts to keep COPN regulation and the SMFP current and effective.
- The demand for COPNs has increased significantly since 1999. The increase is due to a combination of factors that includes advances in the capability and affordability of technology, population growth, continued growth in consumer demand for service, physician desire to vertically integrate their practices, and competition within the health care industry.
- Growth in some COPN categories or services has remained static for a number of years, perhaps indicating no continued need for their inclusion in comprehensive health planning.

Anticipated Changes To Service Area Products and Services

- Strengthened efforts to ensure compliance with agreed upon conditions, particularly charity care commitments, placed on granted COPN.
- Continuing improvement in the timelines of action on project registrations and extensions for certificates, as well as response time to significant change requests.

Service Area Financial Summary

The COPN program is supported entirely with application fees that have averaged \$1 million annually. The average fee paid by applicants is approximately \$20,000. The five regional health planning agencies (HPAs) are supported with general funds. Any surplus in COPN application fees that are not expended by the COPN program at the end of the fiscal year are distributed among the five HPAs.

	<u>Fiscal Year 2007</u>		<u>Fiscal Year 2008</u>	
	General Fund	Nongeneral Fund	General Fund	Nongeneral Fund
Base Budget	\$0	\$1,090,164	\$0	\$1,090,164
Changes To Base	\$0	\$65,283	\$0	\$65,283
SERVICE AREA TOTAL	\$0	\$1,155,447	\$0	\$1,155,447

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Service Area Objectives, Measures, and Strategies

Objective 40608.01

Improve compliance with agreed upon conditions of approval for certificates of public need.

Since 1991, Chapter 4 of Title 32.1 of the Code of Virginia has allowed the State Health Commissioner to condition the issuance of certificate of public need authorization on the applicant's agreement to certain conditions. To date the State Health Commissioner has conditioned certificates of public need on the applicant's commitment to provide care to the indigent and to facilitate the development and operation of primary care services for the underserved.

This Objective Supports the Following Agency Goals:

- Collaborate with partners in the health care and human services system to assure access to quality health care and human services.
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- Promote systems, policies and practices that facilitate improved health for all Virginians.
(This also supports Virginia's long term objective to inspire and support Virginians toward healthy lives and strong and resilient families.)

This Objective Has The Following Measure(s):

● **Measure 40608.01.01**

Rate of Compliance with Conditioned Obligations

Measure Type: Outcome **Measure Frequency:** Annually

Measure Baseline: The average compliance with conditions through the end of FY04 was 25% of agreed upon obligations.

Measure Target: 60% by end of FY07.

Measure Source and Calculation:

Holders of conditioned certificates of public need are required to report compliance with the condition annually. The report form requires reporting of a) gross patient revenue derived from the conditioned service, b) the dollar value of the conditioned obligation based on the gross patient revenue, c) the dollar value (charges) of the care provided in compliance with the condition, d) the dollar value of the shortfall or excess of care provided and the conditioned obligation, and e) contributions made to facilitate the development or operation of primary care services for the underserved. The annual compliance rate is calculated as the number of reports received demonstrating full compliance compared to the number of reports expected based on the database list of indefinitely conditioned certificates of public need.

Objective 40608.01 Has the Following Strategies:

- The VDH Division of Certificate of Public Need (DCOPN) will ensure that its database of conditioned certificates of public need includes all conditioned certificates and their current status.
- DCOPN will send reminder notices to all non-reporting certificate holders 15 to 45 days after the date receipt of a report was expected.
- DCOPN will include requests for delinquent reports as part of the completeness review for all COPN applications.

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- DCOPN will send a letter notifying all certificate holders reporting that they have been non-compliant with a condition(s) of their obligation, their need to develop a plan of correction that brings them into compliance and assures compliance in future years within 15 –45 days of a receipt of a report of non-compliance.
- DCOPN will include requests for positive action that results in compliance with conditions as part of the completeness review for all COPN applications.
- DCOPN will provide a negative review of Required Consideration number 5 (§32.1-102.3.B.5) in the review of COPN requests submitted by holders of conditioned COPNs that are non-compliant with existing conditions placed on any COPN held by the applicant. A negative review of Required Consideration may strengthen, or lead to, a recommendation for denial of the request.
- DCOPN will refer holders of certificates that remain non-compliant and/or non-responsive with conditions 45 days after notification by DCOPN of such non-compliance or non-responsiveness to the Office of the Attorney General for possible prosecution/fining under §32.1-27 and 12VAC5-220-270.A.
- DCOPN will refer licensed holders of certificates that remain non-compliant and/or non-responsive with conditions 45 days after notification by DCOPN of such non-compliance or non-responsiveness to the Acute Care Unit/Licensure Office of the Office of Licensure and Certification for possible revocation or withholding of the license under §32.1-102.2.C.
- DCOPN will publish on the Department’s web site a list of all conditioned certificates by certificate holder, noting whether or not the holder is compliant with condition reporting and the obligations incurred.
- DCOPN will provide positive feedback to compliant certificate holders to acknowledge reporting and obligation compliance and to reinforce positive behavior.

Objective 40608.02

Improve compliance with requirements to make, and report, actual progress on projects authorized with certificates of public need.

The COPN program requires that once a provider of health care services obtains a COPN for certain listed equipment and services the provider must initiate and make progress on the project. The schedule for progress is to be either that authorized in the COPN or as outlined in the Regulations. Failure of a provider to initiate and make progress on a project is grounds for revocation of the COPN authorizing the project. Providers are not allowed to obtain COPN authorization for certain listed equipment and/or services and then not develop them. Such a practice prevents competing providers from developing the service for which a need has been demonstrated. It also needlessly postpones when the needed service or equipment will be available to the public.

This Objective Supports the Following Agency Goals:

- Collaborate with partners in the health care and human services system to assure access to quality health care and human services.
(This also supports Virginia's long term objective to inspire and support Virginians toward healthy lives and strong and resilient families.)
- Promote systems, policies and practices that facilitate improved health for all Virginians.
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This Objective Has The Following Measure(s):

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- **Measure 40608.02.02**

Rate of COPN progress reporting

Measure Type: Outcome

Measure Frequency: Annually

Measure Baseline: The average annual on time reporting of progress through the third quarter of FY 2005 was 51% of expected reports.

Measure Target: Greater than 60% by end of FY07.

Measure Source and Calculation:

Annual reports are due, in the form of an extension request, from holders of certificates of public need at least 30 days prior to the expiration date on the certificate or previous extension. Certificates of public need are issued with expiration dates that are 12 months from the date of issuance. Annual extensions are issued in up to 12-month increments from the date of issuance of the certificate, as long as tangible progress is being made, for the longer of the date authorized on the certificate or three years. A request for indefinite extension is required when the project is complete no later than 30 days prior to the expiration date on the certificate or previous extension. The annual reporting rate is calculated as the number of on time annual extension and indefinite extension requests received compared to the number of requests expected based on the database list of outstanding certificates of public need.

Objective 40608.02 Has the Following Strategies:

- DCOPN will insure that the database of certificates of public need includes all certificates and their current status.
- DCOPN will send reminder notices to all non-reporting certificate holders 15 days after the date receipt of a report was expected.
- DCOPN will include requests for delinquent extensions as part of the completeness review for all COPN applications.
- DCOPN will recommend holders of certificates that have expired and for which no extension has been requested 30 days after the reminder notice be sent a letter by the State Health Commissioner declaring that the certificate has expired and that the project is no longer authorized.
- DCOPN will notify the appropriate Licensure Division and certification offices of the expiration, and therefore loss of authorization for, expired certificates.
- DCOPN will publish on the Department's web site a list of all expired certificates by certificate holder.
- The form for requesting an extension has been revised for ease of use, including facilitating electronic filing, and to request just that information necessary to make a determination that progress has been made on the project.
- Enhanced follow-up on requesting of extensions, with more attention paid to progress, will motivate certificate holders to make required progress, seek appropriate changes to the authorization or proactively surrender the certificate.
- DCOPN will acknowledge all extension requests with an affirmative statement of extension.